

COUNTY:  
SALARY:  
CIRCUIT CLERKS:

Construing House Bill 893, passed  
by the 63rd General Assembly.

February 18, 1947

Honorable Ralph Baird  
Prosecuting Attorney  
Jasper County  
Joplin, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion upon the attached letter from Mr. Harold Jones, Clerk of the Circuit Court of Jasper County, Missouri, which letter reads:

"I am writing for an opinion in regard to my salary as Circuit Clerk of Jasper County. House Bill 893 passed and approved in the 63rd General Assembly, sets the salary at \$4,000.00 per annum in 12 equal installments. My term in office began the first Monday in January, 1947. The County Court contends that I should be deducted \$49.36 from my first installment in 1947 for reason of not taking office until January 6. The Statutes set out the Circuit Clerks term of Office to begin the first Monday in January. The old Statute did not mention equal installments but stated the Clerk should be paid on the first of each month.

"If the County Courts contention is right I would not receive by \$4,000.00 for my first year, nor can I find any provisions for payment at any later date.

"To clear this matter up, I would like to have an opinion from the Honorable J. E. Taylor, Attorney General for the State of Missouri."

The primary rule of statutory construction is to ascertain from the language used the intent of the lawmakers, if possible, and to put on the language its plain and rational meaning in order to promote its object. (See *Donnelly Garment Company v. Keitel*, 193 S.W. (2d) 577.) House Bill 893, passed by the 63rd General Assembly, specifically repeals no statute, but relates

to compensation for the clerk of the circuit court in second class counties. Section 1 of said bill provides that such circuit clerks shall receive as compensation \$4,000.00 per annum, to be paid in twelve equal monthly installments by warrants drawn on the county treasury. Also, that said clerk is allowed to retain, in addition to the aforesaid salary, all fees earned by him in cases of change of venue from other counties. Furthermore, said clerk is required to report all fees accruing to his office and remit same to the county treasury. Section 1, House Bill 893, reads:

"The clerk of the circuit court, in all counties, of the second class, shall receive as compensation for his services, the sum of \$4,000.00 per annum, to be paid in twelve equal monthly installments by the county on warrants drawn on the county treasury. He shall also be allowed to retain, in addition to said annual salary, all fees earned by him in cases of change of venue from other counties."

Under Section 13283, R.S. Mo. 1939, such circuit clerk shall be elected in the year of 1882 and every four years thereafter, and further provides that said clerk shall enter upon his duties on the first Monday in January next ensuing his election. Said Section 13283, R.S. Mo. 1939, reads:

"At the general election in the year eighteen hundred and eighty-two, and every four years thereafter, except as hereinafter provided, the clerks of all courts of record, except of the supreme court, the St. Louis court of appeals, and except as otherwise provided by law, shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor, and shall enter upon the discharge of their duties on the first Monday in January next ensuing their election, and shall hold their offices for the terms of four years, and until their successors shall be duly elected and qualified, unless sooner removed from office."

Under Section 13283, supra, the term of the present Circuit Clerk of Jasper County, Missouri, began on January 6, 1947,

and said term will expire on January 6, 1951. The compensation allowed under Section 1 of said House Bill 893, allowing said clerk \$4,000.00 per annum, means that he is entitled to that amount of money yearly, or every twelve months during his term of office, and that said salary is required to be paid in twelve equal monthly payments. In view of the latter requirement that the salary shall be paid in twelve equal monthly payments, it was apparently the intention of the Legislature to exclude any other form of payment. We think the old maxim, expressio unius est exclusio alterius, is applicable in this instance, which means that the expression of one thing in a statute is the exclusion of all others. In State ex rel. Barlow v. Holtcamp, 14 S.W. (2d) 646, l.c. 650, the court said:

"The probate court is a court of limited jurisdiction, possesses only such power as is conferred upon it by statute, and can exercise its jurisdiction only in the manner prescribed by statute.' St. Louis v. Hollrah, 175 Mo. 79, 85, 74 S.W. 996, 998.

"Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely, that the thing shall not be done otherwise.' 25 C.J. 220, note 16 (c)."

The first twelve warrants to be drawn will pay the Circuit Clerk for the first year of his term of office from January 6, 1947, to January 6, 1948. Likewise, monthly warrants in similar amounts shall be executed to said Circuit Clerk for the balance of his term of office. Had the law not provided the manner of payment of the compensation of said Clerk, then we would conclude that the County Court could pay said Clerk in the manner they are now attempting to put in effect. However, even then, the County Court would be required to pay the Circuit Clerk the full \$4,000.00 compensation per annum, and if the Court only paid him for the actual days he worked in January, 1947, then said Court would be required to pay him for whatever days he worked in January, 1951, prior to the first Monday in the month, which would be the last week of his present term of office. So, in reality, it makes little difference.

In State v. Nordberg, 193 S.W. (2d) 10, the court held that the Constitution of 1945, Section 23, Article IV, defining fiscal year for the state and all its agencies, shall be the twelve months

beginning on the first day of July in each year, does not apply to counties. The question might be raised as to whether the county court could pay the salary prescribed in said House Bill 893, since the per annum salary is for services rendered beyond the current year. Article 2, Chapter 73, R.S. Mo. 1939, placed counties under the county budget law, which required the county court to prepare, enter of record, and file with the county treasurer and state auditor a budget of estimated receipts and expenditures for the year beginning January 1, and ending December 31. Said article also required the county offices to furnish the clerk of the county court, on or before January 15th of each year, an itemized statement of an estimated amount required to pay all salaries and expenses for personal service during the current year. However, the Supreme Court, in Gill v. Buchanan County, 142 S.W. (2d) 665, held that statutes fixing salaries of county officers are in effect a direction to the county court to include such amounts in the budget of the county, and such statutes are not in conflict with the county budget law, but must be read and considered with the county budget law in construing it. That said statutes amount to a mandate to the county court to budget such amounts. In so holding, the court said:

"Defendant also contends that plaintiff is not entitled to recover because there was not a sufficient amount provided in the 1934 county budget for county court salaries to pay salaries of \$4,500 each. (Only \$840 more than the total of salaries figured at \$3,000 each was included in the salary fund for the county court.) However, as hereinabove noted, salaries of county judges are fixed by the Legislature and the Constitution prevents even the Legislature from changing them during the terms for which they were elected. Surely, the county court cannot change them, by either inadvertently or intentionally providing greater or less amounts in the salary fund in the budget. The action of the Legislature in fixing salaries of county offices is in effect a direction to the county court to include the necessary amounts in the budget. Such statutes are not in conflict with the County Budget Law but must be read and considered with it in construing it. They amount to a mandate to the County Court to budget such amounts. Surely no mere failure to recognize in the budget this annual obligation of the county to pay such salaries could set aside this legislative mandate and prevent the creation of this

obligation imposed by proper authority. Certainly such obligations imposed by the Legislature were intended to have priority over other items as to which the county court had discretion to determine whether or not obligations concerning them should be incurred. They must be considered to be in the budget every year because the Legislature has put them in and only the Legislature can take them out or take out any part of these amounts. \* \* \* \* \*

Therefore, we are of the opinion that the decision in Gill v. Buchanan County, supra, disposes of the contention that the County Court cannot pay the Circuit Clerk as provided in House Bill 893. Therefore, since House Bill 893, Section 1, specifically prescribes that said Circuit Clerk shall receive \$4,000.00 per annum and same shall be paid in twelve equal monthly installments, we must conclude that it was the legislative intent that said Circuit Clerk be paid in equal monthly installments and no other manner and that the County Court cannot reduce any warrants paying compensation to the Circuit Clerk in an amount less than one-twelfth of the annual compensation provided for said clerk.

Another well established rule of statutory construction is that a statute should not be construed to make it unreasonable where it can be given reasonable construction. See State ex rel. St. Louis Public Service Company v. Public Service Commission, 34 S.W. (2d) 486, 326 Mo. 169. See also Marler v. Marler's Estate, 104 S.W. (2d) 733.

#### CONCLUSION

Therefore, it is the opinion of this department that circuit clerks in second-class counties are entitled to receive a salary amounting to \$4,000.00 per annum, that said salary must be paid in twelve equal monthly installments as provided in House Bill 893, passed by the 63rd General Assembly. That the County Court cannot reduce any monthly payment below one-twelfth of the annual salary under said House Bill 893. Furthermore, the Circuit Clerk will in effect be paid for services

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rendered during the first month, notwithstanding the fact that he did not work the full month, since under the law he did not assume the duties of his office until the first Monday in January. However, the County will lose nothing by paying said Clerk in this manner, since he will be required to make up this week by working the last week during his term of office, from December 31, 1950, to the first Monday in January, 1951.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General